

Tax Information

Bulletin

Issued Quarterly

March 2005

California State Board of Equalization
P.O. Box 942879, Sacramento, CA 94279-0001

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Sales for Resale—Make Sure Your Records Protect You

Unsupported sales for resale is a consistent problem area in audits. As a retailer, you are responsible for supporting any sale you claim as a nontaxable resale. Without proper documentation, you could be held responsible for tax on a sale you thought was nontaxable. To avoid this problem, make sure your customer gives you a timely, valid resale certificate certifying that the purchase is for resale. You also want to make sure that your records show that the sale was made to the same customer as on the resale certificate.

Example – Furniture Store:

An interior decorator who normally purchases items for resale brings in a client to select furniture. The furniture retailer helps the decorator and the decorator's client to select a living room set. Since the retailer has been working with the decorator, he assumes the decorator is purchasing the furniture for resale, however, the decorator asks that the sales invoice be made out directly to the client. Payment is also made directly from the decorator's client to the furniture retailer. In this situa-

tion, the furniture retailer has not made a sale for resale. The sale is to the decorator's client (the end user of the furniture) and is taxable.

■ Obtaining Specific Resale Certificates

As a seller, you should note the general nature of your customer's business. If the nature of the business is such that the property purchased would not normally be resold, you should question the use of the certificate.

Example – Jewelry Mart:

A jewelry mart retailer helps a customer select a set of bridal rings for \$5,000. The customer owns a women's clothing store that also sells jewelry. The customer gives the jeweler a resale certificate stating that she is in the business of selling "clothing and jewelry" and describes the property she is purchasing as "jewelry." The jeweler is unsure whether to accept the certificate.

While it seems more likely that an owner of a clothing store would purchase numerous amounts of costume jewelry for resale rather than a single set of expensive

rings, the customer may be validly purchasing the rings for resale. Sellers occasionally sell items outside their normal product line. However, since the sale seems unusual, the jeweler should pro-

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Have you registered for the New Electronic Waste Recycling Fee Program?

As of January 1, 2005 retailers who sell or lease certain electronic equipment must now collect and remit an electronic waste recycling fee to the Board. The fee applies to specific new or refurbished televisions, computer monitors, laptop computers, and other video display devices. We notified retailers last fall of the recycling fee and registration requirements. The first return is due April 30, 2005.

Applications for registration and additional information on the electronic waste recycling fee program are available online at www.boe.ca.gov, or www.ecycle.org, or call our Information Center at 800-400-7115.

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New tax rates begin April 1, 2005

Voters approved new taxes in seventeen cities and counties. A special notice listing the new rates was recently sent to all seller's permit holders in California. The notice explains who must collect tax at the new rates and which fixed-price contracts are exempt from the tax increases. For a copy of the notice, visit our website at <http://www.boe.ca.gov/news/isn-cont05.htm>, or call our Information Center.

Beginning April 1, 2005, the new sales and use tax rates are:

City of Richmond: 8.75%
City of South Lake Tahoe: 7.75%
Fresno County: 7.975%¹
City of Lakeport: 7.75%
Marin County: 7.75%
Mariposa County: 7.75%
City of Los Banos: 7.75%
City of Sand City: 7.75%
City of San Juan Bautista: 8.00%
City of Montclair: 8.00%
City of El Cajon: 8.25%
City of Stockton: 8.00%
City of Capitola: 8.25%
City of Sebastopol: 8.00%
City of Santa Rosa: 8.00%
Sonoma County: 7.75%²
City of Farmersville: 7.75%

¹Increases the tax rate in the county from 7.875% to 7.975%. The tax rate in the City of Clovis will increase from 8.175% to 8.275%.

²Increases the tax rate in the county from 7.50% to 7.75%. The tax rates in the cities of Sebastopol and Santa Rosa will increase to 8.00%.

Get your answers in writing

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, and interest charges if the Board determines that you, upon reasonably relying on written advice from us, did not charge or collect sales tax reim-

bursement or use tax from your customer, or pay use tax on your storage or use of property you purchased.

For relief to apply, you must give us a written request for advice that identifies you and fully describes the specific facts and circumstances of the activities or transaction for which the advice is requested. In describing the specific facts of a transaction, it would be helpful if you included in your letter copies of representative documents for your business transactions, such as sales contracts, purchase orders, and invoices.

Note: This relief is not available for advice given over the telephone or in person. Relief also does not apply if you rely on written advice that is given to a different person, even if your transactions are similar. Occasionally, you may receive a copy of a Board letter from a supplier, customer or other business associate explaining that a transaction is exempt from tax. Since you have transactions comparable to those in the letter, you rely on that letter to report tax. If the advice in the letter is incorrect, you are not eligible for relief because the advice was not provided to you by the Board based on your *own* inquiry.

Stockton Branch Office closed

The Stockton Branch Office closed for public service permanently on February 28, 2005. If your account was maintained at the Stockton Office, it has been transferred to our Sacramento District Office at:

3321 Power Inn Road, Suite 210
Sacramento, CA 95826-3889
916-227-6700

The decision to close the Stockton Office was made after much consideration about how taxpayers would be affected. The closing is part of the Board's efforts to address state budget constraints and still provide quality taxpayer services. We hope that the effect of the closing will be minimal. The Sacramento Office provides the full range of services you received from the Stockton Office.

California's cigarette tax stamp goes high-tech

In early January, the Board began replacing the old cigarette tax stamp with a new one that looks very different from the tax stamps that retailers and the public are used to seeing. The unique stamp has hidden high-tech security features that will help to identify counterfeit stamps.

As part of this new anti-counterfeit effort, hand-held scanners have been developed to enable retailers to authenticate that cigarette tax stamps are valid. These scanning devices are available to retailers for purchase. If a retailer cannot authenticate a new cigarette tax stamp using the scanner, the individual should contact the Investigations Division at 916-324-0105.

BOE staff will also be using scanners during inspections to authenticate cigarette tax stamps. If any new cigarette tax stamp cannot be authenticated by BOE staff using the scanner, the product can be seized.

We encourage retailers who still have cigarette packages with the old stamp to sell them as quickly as possible, since the old stamp will be phased out soon.

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New cigarette tax stamp*Continued from page 2*

If you have questions, please call the Excise Taxes and Fees Division at 800-400-7115 (TDD/TTY: 800-735-2929). Select the "Timber, Property Tax and Other Taxes" option, and then "Cigarette and Alcohol Taxes." Staff is available to help you weekdays from 8 a.m. to 5 p.m., except state holidays. You may also visit our website at www.boe.ca.gov.

In addition, if you have questions about purchasing scanning devices, you may call the Form 10 Group, Inc. at 866-924-7873, or you may visit their website at www.tobaccostamp.com.

Are shipping and handling charges subject to tax?

Separately stated charges for shipping taxable merchandise are generally not taxable if they meet both of the following conditions:

- The charges are for shipping the merchandise directly to the purchaser using the U.S. mail, an independent contract carrier, or common carrier, *and*
- The amount charged is the actual cost of the transportation.

What if I charge more than the actual shipping cost?

The amount in excess of the cost of transportation should be included in your taxable sales. In other words, any mark-up applied to the actual cost of the transportation is taxable.

How do I determine the nontaxable amount?

The actual transportation costs should be determined on a transaction-by-transaction basis. You will need to keep records showing the

actual cost of transportation for each transaction.

How do I treat "handling" charges?

If a separate charge is designated "postage & handling" or "shipping & handling," only the portion that represents your actual postage or shipping cost may be excluded from the taxable amount. Charges that are designated as "handling" or "handling charges" are not separate statements of transportation charges. Tax applies to the entire amount of the handling charge.

What if I deliver with my own vehicles?

In general, tax applies to your delivery charges if you use your own vehicle, whether or not those charges are separately stated on the invoice.

Exception. Tax does not apply to delivery charges using your own vehicles if there is a written contract of sale, signed before delivery, that transfers ownership of the property to the purchaser prior to delivery.

What about shipping and handling charges on nontaxable sales?

Transportation and handling charges for nontaxable transactions are nontaxable.

For more information about how tax applies to delivery-related charges, download a copy of our publication 100, *Shipping and Delivery Charges*, and Regulation 1628, *Transportation Charges*, or call our Information Center for a copy.

Small Business Fairs

We invite current and potential business owners to attend one of our upcoming Small Business Fairs, which offer informative workshops on federal, state, and local taxes as well as other government requirements. The fairs are free, but reservations are recommended.

Upcoming Fairs**San Francisco, May 13, 2005**

Hiram Johnson State Building

For more information, call our San Francisco Office, 415-356-6113

Whittier, May 20, 2005

Radisson Hotel Whittier

For more information, call our Norwalk Office, 562-466-1539

San Diego, June 3, 2005

University of San Diego

For more information, call our San Marcos Office at 760-744-6284

Riverside, June 17, 2005

Riverside Convention Center

For more information, call our Riverside Office, 951-680-6705

Los Angeles, July 15, 2005

Loyola Marymount University

For more information, call our Culver City Office at 310-342-1055

To check for other upcoming fairs, please visit our website at www.boe.ca.gov/sutax/tpsched.htm.



Your rights as a taxpayer

As a taxpayer, you have many rights under the Sales and Use Tax Law. These include the right to

- Know how the law affects you
- Be treated fairly, courteously, and promptly
- Question those actions and decisions of Board staff members and officers that affect your business operations

Along with those rights, you have certain responsibilities, including the responsibility to

- Keep informed about tax laws and regulations
- Report and pay taxes when due
- Maintain adequate records of your business operations

For information on your rights as a taxpayer, publication 70, *The California Taxpayers' Bill of Rights* is available to help you. We also publish many other booklets that explain how to apply sales and use taxes. These publications include general information pamphlets and single-sheet *Tax Facts*, as well as *Tax Tips* pamphlets for specific types of businesses. A complete listing of our publications can be found in publication 51, *Guide to Board of Equalization Services*.

To get a copy of our publications, visit our website at www.boe.ca.gov or call our Information Center.

Sales to nonprofit organizations are usually taxable

Many organizations that are granted nonprofit status by the IRS or California Franchise Tax Board mistakenly believe they are automatically exempt from California sales tax. There is no general exemption from California sales

and use tax for nonprofit, charitable, or religious organizations. Accepting an exemption certificate from a nonprofit group with their federal or state income tax exemption number does not necessarily relieve you from reporting sales or use tax on the transaction.

As a rule, tax applies to purchases by nonprofit organizations of items they will use, such as office equipment and supplies. California law does provide specific exemptions from sales and use tax for some nonprofit organizations. If you have a question concerning a sales tax exemption for a nonprofit organization, please see publication 18, *Tax Tips for Nonprofit Organizations*, or call our Information Center.

Documentation sales Continued from page 1

protect himself by asking for a resale certificate describing the specific property being purchased. That is, instead of listing "jewelry" on the property description line, the certificate should state something like, "1 carat white gold bridal ring set invoice #1234." This specific resale certificate will protect the jeweler in the event the sale is questioned in an audit.

For more information about resale certificates, including the required elements and an explanation of what "timely" means, please see publication 103, *Sales for Resale*, and Regulation 1668, *Sales for Resale*. Regulation 1668 also includes a blank sample resale certificate that you can use in your business. You can download copies from our website or call our Information Center.

New or revised reference material

Special Taxes

- 90 Environmental Fee (January 2005)
- 91 Tire Recycling Fee (January 2005)

Sales and Use Tax Regulation Revisions

- 1532 Teleproduction or Other Postproduction Service Equipment (effective November 12, 2004)
- 1619 Foreign Consuls (effective February 5, 2005)
- 1603 Taxable Sales of Food Products (effective September 10, 2004)

Translated Publications

- Publication 108-S When Is Labor Taxable (6-03) Spanish
- Publication 100-S Shipping and Delivery (8-04) Spanish
- Publication 110-S California Use Tax Basics (8-04) Spanish
- Tax Amnesty Brochure, Spanish, Korean, Chinese and Vietnamese

For More Information

All telephone numbers are toll-free

Internet

www.boe.ca.gov ■ www.taxes.ca.gov

Information Center

800-400-7115 ■ TDD/TTY: 800-735-2929

Requests for Fax Copies

800-400-7115 (Choose automated services)

Seller's Permit Verification

888-225-5263 ■ www.boe.ca.gov

Taxpayers' Rights Advocate

888-324-2798 ■ www.boe.ca.gov

Tax Evasion Hotline

888-334-3300

State Legislation

www.leginfo.ca.gov/bilinfo.html